



Certified Recommendation

Raleigh Planning Commission

CR#

Case Information: TC-12-19 Unsafe Building Code

Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	<p>Policy ED 2.2 Resource Allocation Provide resources through existing and new programs to revitalize targeted under-performing businesses and residential areas.</p> <p>Policy ED 2.5 Blight Abatement Reverse conditions of decline and deterioration that have affected some older areas of Raleigh. These conditions are detrimental to economic and equitable growth.</p> <p>Policy ED 2.6 Targeting Infrastructure Investment Invest in public infrastructure (e.g., parks, schools, sidewalks, streetscape) in a targeted manner in older neighborhoods and business districts to enhance residents' quality of life and improve the neighborhoods' ability to retain existing residents and attract new residents.</p> <p>Policy LU 8.2 Neighborhood Revitalization Facilitate neighborhood revitalization and stabilization by focusing grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need. Use social, economic, and physical indicators such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate as key indicators of need.</p>
<i>Action Items</i>	Not Applicable

Summary of Text Change

<i>Summary</i>	Proposes to amend the Raleigh Unified Development Ordinance to incorporate current statutory authority for property that the Council declares to be within "community development target areas" based on statutory criteria.
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Summary of Impacts

<i>Impacts Identified</i>	Adoption of TC-12-19 brings the City's Unsafe code provisions in line with the current statutory language of the N.C.G.S., incorporates the community development target area authority of the N.C.G.S. and provides a procedure for the City Council to use to designate the target area, and creates clarity and sets forth defined processes for staff and citizens.
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Public Meetings

<i>Submitted</i>	<i>Committee</i>		<i>Planning Commission</i>	
08/20/2019				

Attachments

1. Draft Ordinance

Planning Commission Recommendation

<i>Reasonableness and Public Interest</i>	
<i>Recommendation</i>	
<i>Motion and Vote</i>	

This document is a true and accurate statement of the findings and recommendations of the Planning Commission. Approval of this document incorporates all of the findings of the attached Staff Report.

Planning Director

Date

Planning Commission Chairperson

Date

Staff Coordinator:

Mark R. Holland: mark.holland@raleighnc.gov



Zoning Staff Report – TC-12-19

Unsafe Building Code

Request

<i>Section Reference</i>	Sections 11.5.1., 11.5.2., 11.5.3., 11.5.4., 11.5.5., 11.5.6., 11.5.7., 11.5.8., 11.5.9, 11.5.10., 11.5.11., and 11.5.12.
<i>Basic Information</i>	Proposes to amend the Raleigh Unified Development Ordinance to incorporate expanded statutory authority for areas that the Council declares to be “community development target areas” based on statutory criteria relating to poverty or blight.
<i>PC Recommendation Deadline</i>	December 23, 2019

Comprehensive Plan Guidance

<i>Applicable Policy Statements</i>	<p>Policy ED 2.2 Resource Allocation Provide resources through existing and new programs to revitalize targeted under-performing businesses and residential areas.</p> <p>Policy ED 2.5 Blight Abatement Reverse conditions of decline and deterioration that have affected some older areas of Raleigh. These conditions are detrimental to economic and equitable growth.</p> <p>Policy ED 2.6 Targeting Infrastructure Investment Invest in public infrastructure (e.g., parks, schools, sidewalks, streetscape) in a targeted manner in older neighborhoods and business districts to enhance residents’ quality of life and improve the neighborhoods’ ability to retain existing residents and attract new residents.</p> <p>Policy LU 8.2 Neighborhood Revitalization Facilitate neighborhood revitalization and stabilization by focusing grants, loans, housing rehabilitation efforts, commercial investment programs, capital improvements, and other government actions in those areas that are most in need. Use social, economic, and physical indicators such as the poverty rate, the number of abandoned or substandard buildings, the crime rate, and the unemployment rate as key indicators of need.</p>
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<i>Action Items</i>	Not Applicable
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Contact Information

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History/Overview

This text change was authorized by the City Council for the City Attorney's Office to draft a text change to amend the Unsafe Buildings provisions of the UDO (UDO Article 11.5.) to incorporate statutory authority allowing an inspector to declare a vacant or abandoned nonresidential building or structure unsafe if it is within a "community development target area" as based on statutory criteria relating to poverty or blight. Under this expanded authority for "community development target areas", a vacant or abandoned nonresidential structure that is in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance can be declared unsafe and the owner directed to remedy the unsafe condition. If the owner fails to do so, the City can bring an action in Court or can follow statutory requirements to demolish the building.

As proposed, the ordinance would establish conditions in which an inspector may declare any residential building or nonresidential building or structure unsafe if it appears the building or structure is especially dangerous to life. It will define "community development target area" and allow for its designation. The language will define how emergency cases are identified and how notice is serviced and the scheduling of a hearing. It will provide the appeal process and the measures for enforcement to include possible penalties.

Purpose and Need

This text amendment brings the City's Unsafe Building code in line with the current statutory language of N.C.G.S. It will incorporate the community development target area authority of N.C.G.S. §160A-426(b)(2) applicable to vacant or abandoned nonresidential buildings or structures and provide a procedure for the City Council to use to designate the target area. It will also create clarity and set forth defined processes for staff and citizens that are within N.C.G.S. §160-426, et seq. and other portions of the UDO, but were previously not within Article 11.5.

Alternatives Considered

Given the need to follow State law, no alternatives were considered for the initial proposed language.

Scoping of Impacts

Potential adverse impacts of the proposed text change have been identified as follows:

The appeal process is before the City Council as N.C. Gen. Stat. § 160A-430 requires. This has the potential to be a time-consuming process, but is required by State law.

The adverse impacts of taking no action (retaining the existing regulations) have been identified as follows:

This section of the code would not be consistent with state statutes. If this text change is not adopted additional avenues for enforcement in community development target areas may not be available; and citizens and staff would have to continue to refer to multiple sections of the UDO for Unsafe process and procedures. If this text change is not adopted blighted buildings or structures could remain which may create unsafe conditions.

Impacts Summary

Adoption of Proposed Text Change

The adoption of this text will bring consistency with the unsafe building code provisions of the current statutory language of the N.C.G.S. and will provide a procedure for the City Council to use to designate community development target areas that will apply to vacant or abandoned nonresidential buildings or structures. It will provide clarity and set forth defined processes for staff and citizens.

No action

Residential options would remain unchanged.

**ORDINANCE NO.
TC-12-19**

**AN ORDINANCE TO AMEND THE UNSAFE BUILDING CODE OF THE CITY OF
RALEIGH CONTAINED IN ARTICLE 11.5, PART 10: UNIFIED DEVELOPMENT
ORDINANCE FOR THE CITY OF RALEIGH, NORTH CAROLINA**

WHEREAS, N.C.G.S. §160A-426 authorizes the City to declare certain vacant or abandoned nonresidential buildings in community development target areas to be unsafe buildings;

WHEREAS, N.C.G.S. §160A-426 authorizes specific procedures and statutory relief for the City should an owner of a nonresidential building within an identified community development target area fail to remedy unsafe conditions;

WHEREAS, the specific authority of N.C.G.S. §160A-426 authorizing the use of community target areas and the identified specific procedures and statutory relief have not previously been incorporated within the Unsafe Building Code of the City of Raleigh;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
RALEIGH THAT:**

Section 1. Article 11.5 of the Raleigh Unified Development Ordinance, entitled "Unsafe Buildings," is repealed, re-written, and re-enacted as follows:

"Article 11.5. Unsafe Buildings"

Sec. 11.5.1. Short Title.

This Article is adopted and shall be known as the "Unsafe Building Code of the City of Raleigh."

Sec. 11.5.2. Buildings and Structures Declared Unsafe; Notice Affixed.

- A. An inspector may declare any residential building or nonresidential building or structure unsafe if it appears that the building or structure is especially dangerous to life because:
1. The building or structure is especially liable to risk of fire including, but not limited to, those which are unoccupied and are not adequately secured against entry by unauthorized persons, or contain unsafe wiring or an unsafe heating system, or have inadequate means of egress; or
 2. The building or structure has overloaded floors, defective construction, decay, or parts thereof which are so attached or in such bad condition that they may fall and injure members of the public or damage public or private property; or

3. The building or structure is unsanitary or unsafe and poses an immediate health or safety risk to the public; or
 4. The building or structure is in a condition that is especially dangerous to life, health, or other property as specified in writing by the inspector.
- B. In addition to the authority granted in subsection 11.5.2.A, an inspector may declare any nonresidential building or structure within a community development target area unsafe if the building or structure:
1. Appears to the inspector to be vacant or abandoned; and
 2. Appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities that would constitute a public nuisance.
- C. When an inspector declares a building unsafe, the inspector shall affix a notice of the unsafe condition to a conspicuous place on the exterior wall of the building or structure.

Sec. 11.5.3 Designation of Community Development Target Area.

A “community development target area” means an area that has characteristics of an urban progress zone under G.S. 143B-437.09, characteristics of a nonresidential redevelopment area under G.S. 160A-503(10), or an area with similar characteristics designated by the Council as being in special need of revitalization for the benefit and welfare of citizens. Before an inspector declares a building or structure unsafe under subsection 11.5.2.B, the Council shall adopt a resolution, with appropriate findings, that designates the community development target area.

Sec. 11.5.4. Emergency Cases.

In cases where it appears that there is an imminent danger to life or safety of any person unless an unsafe building as defined in Sec. 11.5.2. is immediately repaired, vacated, closed or demolished, the Housing and Neighborhoods Director shall order its immediate repair, evacuation, closing or demolition as he may deem necessary, notwithstanding the other provisions of this Article. The City may take the temporary measures necessary to safeguard persons from immediate danger of collapse of such building and is authorized to close temporarily sidewalks, streets, buildings and structures in places adjacent to such unsafe building and prohibit the same from being used, pending the removal of the danger. The cost of the emergency measures taken shall become a lien against the premises upon which the emergency condition existed upon confirmation of the cost thereof by the Council. The confirmation shall take place only after 10 days' written notice to the owner of the premises where the emergency condition existed.

Charter reference: Building inspection, abatement of unsafe conditions.

State law reference: G.S. 160A-193.

Sec. 11.5.5 Notice and Hearing; Order to Take Corrective Action.

- A. If the owner of a building or structure that has been declared unsafe shall fail to take prompt corrective action, the inspector shall give the owner written notice, by certified or registered mail to the last known address or by personal service that:
1. The building or structure is in a condition that appears to meet one or more of the following conditions:
 - a. Constitutes a fire or safety hazard;
 - b. Is dangerous to life, health, or other property;
 - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children; or,
 - d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
 2. A hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 3. Following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.
- B. If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the City at least once not later than one week prior to the hearing. An inspector may also send a notice by first-class mail to an owner's last known mailing address but is not required to do so.
- C. The inspector shall issue findings after the hearing. If the inspector finds that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall issue a written order to take corrective action to the owner requiring the owner to remedy the defective conditions within a specified period not less than 60 days from the date of the order by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps as the inspector may prescribe; provided, that where the inspector finds in the order that there is imminent danger to life or other property, the inspector may order that corrective action be taken in such lesser period as may be feasible.

Sec. 11.5.6. Appeal; Finality of Order if Not Appealed.

Any owner who has received an order to take corrective action under this Article may appeal to the City Council by giving notice of appeal in writing to the Housing and Neighborhoods Department Director and to the City Clerk within 10 days after the inspector issues the order. The City Council shall hear and render a decision on an appeal within a reasonable time. The City Council may affirm, modify and affirm, or revoke the order. In the absence of an appeal, the inspector's order to take corrective action shall be final.

Sec. 11.5.7. Administrative Liability.

No officer, agent or employee of the City shall render himself personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties under this Article.

Sec. 11.5.8. Unlawful to Disregard Notices or Orders.

When a building or structure is posted as unsafe, it shall be unlawful for any person to occupy or knowingly allow the occupancy of a building or structure so posted.

Sec. 11.5.9. Enforcement.

A. Criminal Violation.

If any person shall violate any provision of this Article, he shall be guilty of a misdemeanor and shall be punished as allowed by law.

B. Injunctive or Other Relief.

The City may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

C. City's Option to Remove Unsafe Building or Structure.

1. If an appeal is not taken within 10 days and the owner fails to comply with the order issued, the Housing & Neighborhoods Director or his designee shall report such facts and conditions of the building or structure to the Council for action at a meeting at which time the owner and other interested parties may be heard. The Council may direct by ordinance that the City repair, remove, or demolish the building or structure, the cost of which shall become a lien against the premises upon confirmation of the cost thereof by the City Council. The confirmation shall take place only after 10 days' written notice mailed by first-class mail to the owner at the address shown on county tax records. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Chapter 160A, Article 10 of the General Statutes.
2. If the building or structure is removed or demolished by the City, the City shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The City shall credit the proceeds of the sale against

the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the Clerk of Superior Court of the county where the property is located.

3. The amounts incurred by the City in connection with the removal or demolition shall also be a lien against any other real property owned by the owner of the building or structure and located within the city limits or within one mile of the city limits, except for the owner's primary residence. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Chapter 160A, Article 10 of the General Statutes, except that this additional lien is inferior to all prior liens and shall be collected as a money judgment.

D. Civil Penalties.

1. Any owner of a building or structure who fails to comply with an order to repair, vacate and close, demolish or remove any building or structure declared unsafe pursuant to the provisions contained in this Article, or by state law, shall be subject to a civil penalty of \$500.00 upon the first day following the expiration of any deadline as set forth within said order to repair, vacate and close, or demolish said building or structure.
2. Continuing Civil Penalty. A continuing civil penalty of \$100.00 per day shall be imposed for each subsequent day that any unsafe building or structure remains in violation of any duly issued order issued pursuant to this Article.
3. Any person who shall reoccupy or any person who shall permit the reoccupancy of any building or structure declared unsafe, once vacated, shall be subject to a civil penalty of \$500.00 upon the determination that the building or structure has been reoccupied in violation of this UDO. Each day's occupancy shall be a distinct and separate offense.
4. If a person fails to pay the civil penalty within 30 days after being notified of the amount due, the City may recover the penalty together with all costs by filing a civil action in the general court of justice in the nature of a suit to collect a debt.

Sec. 11.5.10. Alternate Remedies.

The City, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings pursuant to this UDO, or in accordance with State law, to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved, or to prevent any illegal act, conduct or use in or about the premises of the building or the structure.

Nothing in this section shall be construed to impair or limit the power of the City to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

Sec. 11.5.11. Lis Pendens.

- A. At any time after an inspector issues a written notice under Sec. 11.5.5, any inspector may file a Notice of Lis Pendens with the Clerk of Superior Court of the county where the property is located. A copy of the written notice or a copy of the order to take corrective action shall be attached to the Lis Pendens. When the Lis Pendens is filed with the Clerk,

it shall also be served on the owners and parties in interest in the building or dwelling, including any lienholders and tenants who may be determined by the exercise of reasonable diligence.

- B. Any inspector may cancel the Lis Pendens upon a determination by that inspector that the property is no longer unsafe and that the owner has fully complied with the inspector's order to take corrective action. Cancellation must be made in a writing signed by the inspector and provided to the Clerk of Court.

Sec. 11.5.12. Administrative Fee and Costs.

- A. In addition to any other charge, any owner of a building or structure located within the City and its extraterritorial jurisdiction shall be subject to an administrative fee of \$325.00 upon the finding at the hearing held pursuant Sec. 11.5.5, that the building or structure is in an unsafe condition as defined by this Article or State law.
- B. Any owner who has had any previous findings of an unsafe building or structure within the City or its extraterritorial jurisdiction within a 12-month continuous period, shall be subject to an administrative fee of \$650.00 upon the finding at the hearing held pursuant Sec. 11.5.5, that the building or structure is in an unsafe condition as defined by this Article or State law.
- C. The owner may also be assessed any actual costs incurred by the City in obtaining service including but not limited to, legal publication and personal delivery costs for notices, and orders.”

Section 2. All laws and clauses of laws in conflict herewith are hereby repealed to the extent of said conflict.

Section 3. If this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to this end the provisions of this ordinance are declared to be severable.

Section 4. The provisions of this ordinance shall not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued prior to the effective date of this ordinance.

Section 5. This ordinance has been reviewed by the Raleigh Planning Commission, adopted following a duly advertised public hearing of the Raleigh City Council, and provided to the North Carolina Capital Planning Commission, all as required by law.

Section 6. This ordinance shall be enforced as provided in N.C.G.S. 160A-175 or as provided in the Raleigh City Code. All criminal sanctions shall be the maximum allowed by law notwithstanding the fifty-dollar limit in G.S. 14-4(a) or similar limitations.

Section 7. This ordinance is effective sixty (60) days following its adoption.

ADOPTED:

EFFECTIVE:

DISTRIBUTION:

This ordinance prepared by the Raleigh City Attorney's Office